



GEORGE C. JONES  
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June 29, 2010

**VIA ECF & FIRST CLASS MAIL**

The Honorable Garrett E. Brown, Jr.  
Chief United States District Judge  
Clarkson S. Fisher Federal Building  
and U.S. Courthouse  
402 East State Street, Room 2020  
Trenton, New Jersey 08608

The Honorable Madeline Cox Arleo  
United States Magistrate Judge  
Martin Luther King, Jr. Federal Building  
and U.S. Courthouse  
50 Walnut Street  
Newark, New Jersey 07101

Re: *Abbott Labs. et al. v. Biovail Labs. Int'l SRL et al.* (09-cv-0005-GEB-MCA)  
and *Elan Pharma Int'l Ltd. et al. v. Biovail Labs. Int'l SRL et al.*  
(08-cv-5412-GEB-MCA) ("Biovail Matters")

*Abbott Labs. et al. v. Lupin Ltd. et al.* (09-cv-1007-GEB-MCA)  
and *Elan Pharma Int'l Ltd. et al. v. Lupin Ltd. et al.*  
(09-cv-1008-GEB-MCA) ("Lupin Matters")

*Abbott Labs. et al. v. Impax Labs. Inc.* (09-cv-5517-GEB-MCA)  
and *Elan Pharma Int'l Ltd. et al. v. Impax Labs. Inc.*  
(09-cv-5541-GEB-MAS) ("Impax Matters")

Dear Chief Judge Brown and Magistrate Judge Arleo:

Following the status call with Your Honors on June 2, 2010, the parties made an effort to coordinate claim construction in the above-captioned matters. All of the parties have conferred and have reached agreement on a joint schedule for Markman submissions as follows:

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|                   |   |
|-------------------|---|
| July 9, 2010      | Disclosure of Initial List of Claims Asserted Infringed         |
| July 23, 2010     | Exchange of Proposed Claim Terms for Construction               |
| August 6, 2010    | Exchange of Preliminary Claim Constructions                     |
| August 20, 2010   | Submission of Joint Claim Construction and Prehearing Statement |
| September 3, 2010 | Opening Markman Submissions                                     |
| October 1, 2010   | Responsive Markman Submissions                                  |

The parties respectfully request that the Court set a date for a joint claim construction hearing at the Court's earliest convenience following the completion of the Markman submissions on October 1, 2010.

The parties have further agreed that, for the purposes of the proposed Markman schedule, plaintiffs will make a good-faith attempt to identify all claims to be asserted. However, given the preliminary status of discovery in the Impax and Lupin Matters, plaintiffs reserve the right to amend the claims to be asserted. In the event that any amendment of the asserted claims raises additional issues of claim construction, the parties will develop a mutually acceptable schedule for handling those issues.

Plaintiffs have agreed to be reasonable in the number of claims that they assert against each defendant. However, each party reserves the right to seek a further modification of the schedule if the number of claim terms to be construed reasonably requires any of the briefing periods to be extended. If a request to extend the Markman schedule is made, the Biovail Parties note that an extension of the above-proposed schedule will prejudice them because the 30-month stay in the Biovail Matters expires in March 2011. Accordingly, if an extension request is made, the Biovail Parties reserve the right to request that the Court proceed on the above Markman schedule for the Biovail Matters.

If this joint proposal of the parties is acceptable to the Court, the parties have included proposed amended scheduling orders in each of the above-captioned cases as Exhibits A, B, C, D, E, and F to this letter.

The parties in *Elan v. Impax* (09-cv-5541) note that Magistrate Judge Shipp is listed in the docket as being the referral judge in that case. It was our understanding that Magistrate



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Judge Arleo would be the referral judge for all of the matters addressed in this letter. If this is still the Court's intention, we respectfully ask the Court to issue the appropriate order to make the change.

Lastly, in the Biovail Matters, fact discovery is set to close on June 30, 2010. There are some fact depositions that the parties will not be able to complete before June 30, 2010. The parties in the Biovail Matters have conferred and agree that those remaining fact depositions (of inventors, plaintiffs' 30(b)(6) designees, and patent prosecution witnesses) can be completed after June 30<sup>th</sup> without impacting the Markman schedule outlined above. Accordingly, if acceptable to the Court, the parties intend to complete those remaining fact depositions during the Markman period.

Respectfully yours,

A handwritten signature in black ink that reads "George C. Jones". Below the signature, the name "GEORGE C. JONES" is printed in capital letters.

GCJ/jmc

Attachments

cc: All counsel of record (w/attachments) (via ECF and e-mail)